THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.10376 of 2006

ORDER:

This writ petition is filed seeking a Mandamus declaring the action of the respondent-University in not considering the case of the petitioner for appointment to any of the statutory positions in the Department of Commerce and Business Management, such as, Head/Chairman, Board of Studies/Dean of Faculty at Respondent University Headquarters, Warangal on the basis of seniority, as arbitrary and illegal and consequently direct the respondent-University to appoint the petitioner to any of those statutory positions.

The short question that falls for consideration in this writ petition is whether the petitioner, who is working as Professor, Department of Commerce and Business Management, University Post Graduate College, Kakatiya University at Karimnagar, one of the constituent colleges of Respondent University in the Department of Commerce and Business Management, is entitled for any of the statutory positions viz., Head/Chairman, Board of Studies/Dean of Faculty at respondent University headquarters, Warangal on the basis of seniority.

The facts are not much in dispute. The admitted facts are that the petitioner was appointed in the year 1981 as Lecturer and promoted as Reader in the year 1992 and subsequently promoted as Professor in the year 1994 and posted as Principal of P.G. College, Karimnagar, which is a constituent college of respondent-University.

The complaint of the petitioner is that though he is fully qualified and eligible to hold any of those statutory positions, he is not being posted. He is senior to many of those who have already been held such positions and his repeated requests did not yield any fruitful results. Hence the writ petition.

A detailed counter affidavit has been filed by the respondents denying the allegations made by the petitioner and asserting that the petitioner is working as Principal of Post Graduate College, Karimnagar, though it is one of the constituent college of Respondent University, as a matter of policy, those who are posted outside the

University Headquarters are not being considered for those statutory positions. According to the respondents, petitioner is aware of the practice adopted in the University in this regard, which is in vogue for the past two decades. Therefore, as a matter of policy, petitioner's candidature was not considered for any of those statutory positions. Further, petitioner has no right whatsoever to claim statutory positions under law.

Heard both sides and perused the material made available on record.

The learned Senior Counsel Sri K.Ramakrishna Reddy appearing for the petitioner, strenuously contended that absolutely there is no valid policy to negate the candidature of the petitioner for considering his case for being appointed/promoted as Head/Chairman, Board of Studies/Dean of Faculty at University Headquarters, Warangal. On the other hand, as per the Andhra Pradesh Universities Act, 1991 and the rules made thereunder, petitioner is entitled for such statutory positions as a matter of right. In this regard, the learned counsel for petitioner drawn attention of the Court to definitions of Section 2 (5), (10), (22), (23), (25), (27) and (28), which reads as under:

> (5) "Constituent College" means, a college located outside the University Campus and established or maintained by the University for providing courses of study qualifying students for admissions to the examinations in accordance with Regulations prescribed; and includes a college so located and established or maintained by the University immediately before the commencement of this Act;
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> (10) "Head of Department" means, a teacher of the University responsible for the coordination of instruction, training and research in any Department of the University.
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> (22) "Teachers" means, Professors, Readers and Lecturers in a college and such other persons giving instruction in a college as may be declared by the statues to be teachers.
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> (23) "Teachers of the University" means, teachers appointed by the University to give instruction or guide research in the University and constituent colleges.

(25) “University Area” means, the area indicated against each University specified in the Schedule.

(27) “University College” means, a college located in the University campus which is established or maintained by the University and provides courses of study qualifying students for admission to University examinations, in accordance with the Regulations prescribed and includes a college so located and established or maintained by the University immediately before the commencement of this Act.

(28) “University Professor” means, a person appointed as such by the University.

From the above, it is seen that a teacher of an University, includes teachers appointed by the University to give instruction or guide research in the University and constituent colleges located outside the University Campus, which is established or maintained by the University and provides courses of study qualifying students for admission to University examinations, in accordance with the Regulations prescribed and a college so located and established or maintained by the University before the commencement of the Act. Thus, it is clear that the Teachers of University means, teachers working in University colleges, as well as its constituent colleges.

The learned counsel for petitioner also drawn the attention of the Court to various provisions to show that Head/Chairman, Board of Studies/Dean of Faculty are statutory positions, who shall be appointed by the Executive Council from among the members of the colleges on the recommendations of Vice Chancellor. Further, it is the contention of the petitioner that many of his juniors, even his own students, were being appointed as Head/Chairman, Board of Studies/Dean of Faculty and his case was denied only on the ground that a person working in the constituent colleges outside Headquarters is not entitled for such posts. The respondents are not able to show any bar as to consideration of a Professor working in the constituent colleges of the University outside University Headquarters for being appointed as Head/Chairman, Board of Studies/Dean of Faculty. On the other hand, the learned counsel for respondent-University has

been harping upon that this is a convention like policy, which is in vogue for the last so many years and even the petitioner is aware of the same, therefore, such a practice which is adopted since longtime cannot be disturbed unless and until a decision is taken by the Executive Council in this regard.

The learned counsel for respondent was not able to place any material to show that the so-called policy adopted earlier has the sanction of Executive Council of the University. Further, he stated that may be, there is no such resolution passed by the Executive Council, but now it has referred the matter to a committee and as soon as the committee gives its report, the case of the petitioner will be taken up. That is fine. But as of now, there is no bar for considering the case of the petitioner. The petitioner has been making representations for the last more than 10 years, but they did not yield any results. Absolutely, there is no bar for considering the candidature of petitioner for statutory positions, like Head/Chairman, Board of Studies/Dean of Faculty at respondent University headquarters, Warangal, though he is working as Principal, Post Graduate Centre at Karimnagar. In fact, one person has already been considered for the post of Dean and he was drafted from the constituent college at Khammam. It seems, at that time, it was resolved by the Executive Council that the committee under the Chairmanship of Dr.S.Upendra Sastry may be requested to study and report with necessary recommendations for appointment of Senior Professors of Constituent Colleges outside Warangal to the statutory positions like Head of Departments and Chair persons Board of Studies etc. In fact, there is no bar as of now. May be some people have been making complaints as to deprivation of their rights being considered for the post of Head/Chairman, Board of Studies/Dean of Faculty and a committee is set up now. But unless and until the policy adopted, or any convention set up in the University, for all these years, is supported by the provisions of the Act, the respondent-University cannot deny consideration of petitioner's candidature for those statutory positions.

The learned senior counsel further strenuously contended that the dignity of the petitioner is belittled and he was asked to work under his juniors and also under his own students, who became Professors

later. This is nothing but discriminatory treatment adopted among the Professors working at University Headquarters on the one hand and the Professors working at constituent colleges on the other hand. Further, the learned counsel for petitioner relied upon the judgment in **E. P. ROYAPPA V. STATE OF T.N. AND ANOTHER**[1] and submitted that asking the petitioner to work under his juniors, particularly, his own students, is nothing but humiliation, and contrary to the principle of equality as envisaged under Articles 14 and 16 of the Constitution of India. I am in full agreement with the submissions made by the learned counsel for petitioner. Absolutely there is no provision under the Act to deprive the petitioner of his legitimate right for being considered for the post of Head/Chairman, Board of Studies/Dean of Faculty at respondent University headquarters, Warangal. The few excerpts of the above decision may be relevant to be noted as under:

> "Articles 14 and 16 strike at arbitrariness in State action and ensure fairness and equality of treatment They require that State action must be based on valid relevant principles applicable alike to all similarly situate and it must not be guided by any extraneous or irrelevant considerations because that would be denial of equality. Where the operative reasons for State action, as distinguished from motive inducing from the antechamber of the mind, is not legitimate and relevant but is extraneous and outside the area of permissible considerations, it would amount to mala fide exercise of power and that is hit by Arts. 14 and 16. Mala fide exercise of power and arbitrariness are different lethal Fadiations emanating from the same vice: in fact the latter comprehends the former. Both are inhibited by Art.s 14 and 16.
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> The ambit and reach of Arts. 14 and 16 are not limited to cases where the public servant affected has a right to a post. Even if a public servant is in an officiating position, he can complain of violation of Arts. 14 and 16 if he has been arbitrarily or unfairly treated or subjected to mala fide exercise of power by the State machine."

For all the above reasons, I am of the opinion that the action of the respondent-University in not considering the case of the petitioner for appointment to any of those statutory positions in the Department of Commerce and Business Management at its Headquarters in Warangal is arbitrary and illegal.

In the result, the respondent-University is directed to consider the case of the petitioner for appointment to any of the statutory positions in the Department of Commerce and Business Management, such as, Head/Chairman, Board of Studies/Dean of Faculty at respondent University headquarters, Warangal, as per law, and pass appropriate orders within a period of six (6) weeks from the date of receipt of a copy of this order.

The writ petition is accordingly allowed. No order as to costs.

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C.V.RAMULU,
J

Date: .12.2007

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THE HON'BLE SRI JUSTICE C.V.RAMULU

W.P.No.10376 of 2006

.12.2007

IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE SRI JUSTICE C.V. RAMULU

W.P.No.10376 of 2006

Date: December, 2007

Between:

Prof.T.Jogachary

.. Petitioner

And

Kakatiya University, Vidyaranyapuri,
Warangal, rep. by its Registrar.

.. Respondent

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[1] AIR 1974 SC 555